

Will legal steps work in Staircase?

Mining attorney to use winning argument in monument dispute.

By Karl Cates
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NEPHI — The legal victory that allowed two miners to open a gypsum mine last week in a wilderness area on Mount Nebo is being used as ammunition by another company hoping to tap strategic-mineral deposits inside the Grand Staircase-Escalante National Monument.

"This just shows that if people are willing to fight the maze of federal red tape, they can prevail," said Springville attorney Allen K. Young, who

represented Nephi miners Bob Steele and Jack Dansie in a federal lawsuit that two years ago ended when the U.S. Forest Service agreed to an unusual settlement.

Young has been quick to recognize the implications of the case, agreeing to represent a Dallas-based company called 3R Minerals, which holds similar claim to titanium and zirconium development on more than 3,000 acres inside the nation's newest national monument.

He said his new clients believe there could be billions of dollars of the strategic metals in subsurface seams just south of Escalante in the Carcass Canyon Wilderness Study Area of the preserve. The company

acquired its mineral claims in April and May 1996, only a few months before President Clinton created the 1.7 million-acre monument.

3R Minerals has since enlisted one powerful ally, in House Majority Leader Rep. Dick Armey, R-Texas, who in May wrote a letter to the Interior Department on behalf of 3R Minerals. About six weeks ago, Bill Lamb, the BLM's top official in Utah, replied to Armey with a missive that said the company had yet to submit proper plans for the operation.

Last week, the BLM turned down 3R Minerals' initial application, and Young said the company will appeal the ruling.

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A decisive point in the Mount Nebo case was that Steele and Dansie owned their claims before Congress created the wilderness area that contains them today in the Uinta National Forest. The Forest Service, midway through a trial over the Steele-Dansie lawsuit, agreed to a pay \$120,000 cash settlement that also allowed Steele and Dansie to develop their claims in perpetuity.

Today, their Juab County gypsum operation is the only open-pit mine inside a federal wilderness area and the only wilderness mine of any kind with year-round motorized access. It is likely to have a life of at least 30 years, as miners tap a gypsum vein that holds between 3 million and 6 million tons with an untapped value of between \$15 million and \$30 million, Steele said. Processed gypsum from the mine will be worth several times that.

While Young and his Nephi clients draw strong parallels between the circumstances on Mount Nebo and those in the national-monument case, others seem skeptical of the comparison.

"It's pretty questionable that

they could do that down there," said Scott Groene, a spokesman for the Southern Utah Wilderness Alliance, which has fought to ban natural-resource development inside the monument.

Tom Tidwell, the Forest Service's Spanish Fork district ranger, noted that the Mount Nebo claims are "patented," a status that gives them more weight than the unpatented claims held in Garfield County by 3R Minerals.

Still, Groene said environmentalists take notice when any activity occurs under the auspices of the 125-year-old federal statute, which governs mining claims on public lands and was written to promote development.

"What all this shows is that this nation is still troubled by an antiquated mining law that's a century out of date," Groene said.

Young said the Steele-Dansie case could bode well for miners everywhere who are at odds over mining rights with the federal government.

Halfway through a weeklong trial, the Forest Service in 1995 agreed to let Steele and Dansie develop their claims and to pay them \$120,000 for their litigation trouble. The agency originally offered \$15,000 in exchange for the rights.

The settlement resurfaced last

week as it was formalized and miners began removing gypsum from the site, trucking it out over a road that crosses the wilderness area just south of Nephi. Steele and Dansie capitalized on the occasion to trumpet their victory and to rally sympathizers around a cause shared by hundreds of mining-claim owners fighting with the federal government in Utah and elsewhere in the West.

"What this means is that anybody with existing, valid rights has the same opportunity," Steele said.

Plaintiffs in the suit won a key battle early when they were able to show — over Forest Service objections — that a road up Gardner Canyon had been historically well-established. Research into frontier diaries and old newspapers showed the road was built as a tithing project by Mormon pioneers in the 1850s and that the canyon was developed for water at about the same time.

"It doesn't meet the criteria for wilderness," said Dansie, noting that by definition wilderness is roadless and without significant modern development.

Young in a June letter to the Escalante office of the BLM, made the same historic-road case he did in the Mount Nebo case. He also

noted his earlier success at Nephi.

"I tell you this not to saber rattle but to merely advise you of my knowledge of my clients' right to exercise these valid, existing rights," he wrote.

That Dansie and Steele owned their claims before the wilderness was created in 1988 was the main factor in forcing a settlement, however.

Young said last week that a similar strategy will be followed on the Grand Staircase-Escalante zirconium/titanium claims, which number 40 separate, 20-acre plots on U.S. Bureau of Land Management property and at least 2,400 acres of state trust lands inside the monument.

Young said the dispute will likely end up in the U.S. Federal Court of Claims in Washington, D.C., where Steele and Dansie won their 1995 settlement.

The Grand Staircase-Escalante claims have been explored under previous owners.

In 1989, Garfield County spent \$500,000 on a mine-demonstration project that failed to establish any permanent activity, despite a prediction by County Commissioner Louise Liston that the site "will develop into a viable industry for Garfield County."